IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 582 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHABHAI KUNVERBHAI VAGHARI - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR BJ TRIVEDI for Appellant(s) : 1,
MR JT TRIVEDI for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 26/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.The present appellant-original accused No.2

along with six other accused were charged and tried by the learned Addl. Sessions Judge, Bhavnagar, in Sessions Case No.141 of 1996 for the offences punishable under Sections 147, 148, 149, 302, 324, 504 and 506(2) of IP Code and also under Sec.135 of Bombay Police Act.

2.The original accused No.1-Dinesh Kunverbhai Vaghri and the present appellant-original accused No.2-Bhikha Kunverbhai Vaghri were convicted and sentenced to RI for life and fine of Rs.250/-, in default, one month SI for the offence punishable under Sec.302 read with Sec.34 of IPC, by the learned Addl. Sessions Judge, Bhavnagar, vide judgment and order dated 31-5-1997. However, original accused Nos.3 to 7 were acquitted for the offences charged against them. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the appellant-original accused No.2 has preferred this appeal.

3.The case of the prosecution in short is that

the complainant and his two brothers including the deceased were residing with their mother. On 29-6-1996, they went to the house of their grandparents situated at a distance from their house. When his elder brother Dhirubhai was coming there on bicycle at about 8.00 a.m., the accused Dinesh Kunver gave abuses to Dhirubhai and asked him to tell his grandfather not to talk about the agricultural field. At that time, Dulabhai, son of Dinesh, came out of his house with dharia and Dineshbhai snatched away the same and gave blow with it on the head of Dhirubhai as a result of which, Dhirubhai started bleeding profusely. At that time, Bhikha Kunver with dharia in his hand and other accused Kishore Dinesh and Dhula Dinesh with iron pipe came running and started inflicting blows on Dhirubhai. When complainant and other relatives tried to intervene, the accused became furious and started beating them resulting into injuries on the shoulder of complainant and also on

his grandmother. While leaving, they were threatening that Dhiru somehow escaped and he would definitely be killed. As Dhirubhai was grievously injured, he was taken to Sihor Community Health Centre from where he was shifted to Sir.T.Hospital, Bhavnagar at the advice of doctor. Dhirubhai died during the course of treatment. Therefore, a complaint was given by the complainant-Kishorebhai Jadavbhai before PSI, Mr.Sarvaiya in Sir.T.Hospital itself and janvajog entry No.66 of 1996 was made. As the incident happened within the jurisdiction of Sihor Police Station, PSI, Shri Sarvaiya sent the same to Sihor Police Station. PSO of Sihor Police Station registered the same and handed over the investigation to PSI, Mr.Rahevar. The complaint was registered as Sihor Police Station C.R.No.I-76 of 1996 for the offences punishable under Secs.147, 148, 149, 302, 324, 504 and 506(2) of IP Code and also under Sec.135 of Bombay Police Act. He went to the place of offence and also recorded the

statements of father, mother and other witnesses including neighbours. Arrangements were also made for inquest panchnama and also for post mortem of the deceased. Panchnama of scene of offence was also prepared and further investigation was handed over to PSI, Shri Rajpara. PSI, Shri Rajpara arrested the accused and also seized the muddamal used in the commission of offence by drawing panchnama. He also attached the cloth wore by the accused at the time of committing the offence as well as the cloth found on the body of the deceased by drawing panchnamas. Muddamals were also send to FSL for analysis and on receipt of FSL and post mortem reports, same were kept in investigation file. Upon completion of investigation, charge sheet was submitted against the accused in the Court of learned Judicial Magistrate (First Class), Sihor.

4. As the offences alleged against the accused were exclusively triable by the Court of Sessions, learned J.M.F.C., Sihor, committed

the case to the Court of Sessions at Bhavnagar for trial where it was numbered as Sessions Case No.141 of 1996. Charge was framed by the learned Addl. Sessions Judge, Bhavnagar, against the accused at Ex.3. The accused pleaded not guilty to the charge and prayed of trial.

5.To prove the case against the accused, the prosecution examined 21 witnesses in all namely, P.W.No.1, Dr.Khodabhai Lakhabhai Dabhi, Ex.22, the doctor who performed post mortem on the body of the deceased; P.W.No.2, Ashokbhai Jadavbhai Solanki, Ex.25, brother of the deceased and the complainant who filed the complaint Ex.11; P.W.No.3, Bhavsingbhai Jesingbhai Ex.26; P.W.No.4, Narsingbhai Virabhai Chauhan Ex.27; P.W.No.5, Kanaiyalal Bhikhalal Pandya, Ex.31, Circle Inspector of Sihor Taluka Police Station; P.W.No.6, Jesingbhai Dadbhabhai Parmar Ex.34; P.W.No.7, Ravjibhai Jesingbhai Parmar Ex.36; P.W.No.8, Vakhatsang Jivansang Rathod Ex.37; P.W.9, Anilbhai Chimanlal Soni, Ex.39; P.W.10,

Harshadrai Bhanushankar Bhatt, Ex.40; P.W.11, Ramjibhai Mavjibhai Rathod, Ex.42; P.W.12, Salimbhai Rahimbhai Belim, Ex.44; P.W.13, Jadavbhai Kalyanbhai Solanki, Ex.46; P.W.14, Shamjibhai Babubhai Solanki, Ex.47; P.W.15, Shantilal Jumji Sadat, Ex.48, PSO of Sihor Police Station; P.W.16, Anirudhsinh Natubha Gohil, Ex.50, Head Constable posted at Sir.T.Hospital; P.W.17, Vikramsinh Arjunsinh Rahevar, Ex.51, PSI of Sihor Police Station, who investigated the matter and handed over further investigation to PSI, Rajpara; P.W.18, Balabhai Mohanbhai Rajpara, Ex.52, PSI of Sihor Police Station, who took over investigation from PSI, Mr.Vikramsinh Arjunsinh Rahevar; P.W.19, Pruthvirajsing Mahipatsing Sarvaiya, Ex.59, PSI, “A” Division Police Station, Bhavnagar, who recorded the complaint of complainant at Sir.T.Hospital; P.W.20, Dr.Hardev Mohanbhai Vaghela, Ex.65, Medical Officer at Sihor Community Health Centre and P.W.21, Dr.Jagsaran Ramji Srivastav, Ex.67, doctor at

Sir.T.Hospital on emergency duty. Prosecution also relied on various documentary evidence namely, panchnama of scene of offence Ex.25; complaint Ex.60; inquest panchnama Ex.21; post mortem note Ex.24; recovery panchnama Exs.38 and 43; panchnama of cloth and blood of the deceased Ex.45; copy of station dairy Ex.49; FSL forwarding letter Ex.53; receipt of muddamal by FSL Ex.54; FSL report Ex.56; serological report Ex.57; medical certificate Ex.66 and seizure of cloth of the deceased Ex.15. Defence side also examined Hanubhai Mahmadbhai Makwana, Ex.70 and Narsangabhai Bhupatbhai Mori Ex.71 as its witnesses.

6. On submission of closing purshis by the learned APP, learned Addl. Sessions Judge, Bhavnagar, recorded further statement of the accused under Sec.313 of the Code of Criminal Procedure. Thereafter, on hearing the learned advocates appearing for the respective parties, learned Addl. Sessions Judge, Bhavnagar, delivered the judgment whereby the original accused Nos.1 and 2 were convicted

and sentenced to suffer for life which is giving rise the present appeal by the appellant-original accused No.2. However, accused Nos.3 to 7 were acquitted of the charges levelled against them.

7. We have heard learned counsel for the appellant, Mr.J.T.Trivedi and learned APP, Mr.Kodekar for the respondent-State at length.

8. It is mainly contended by the learned counsel for the appellant, Mr.Trivedi, that there is a delay in lodging the FIR. He has taken us through the relevant evidence such as FIR, date and time of incident as well as the time at which the victim was taken to Sihor Community Health Centre and thereafter to Sir T.Hospital, Bhavnagar, and contended that though there were ample opportunities to file the complaint at the earliest, same have not been done. However, it has been filed later on so as to implicate falsely the accused into the crime in question.

9. It is further contended that nowhere in the

FIR it is stated that the appellant had given any dharia blow to the victim. There are no evidence either to show that the appellant was there with dharia at the time of incident and hence, there are no evidence to connect the appellant with the crime in question. Taking us through the complaint and the evidence of complainant, Ashokbhai Jadavbhai Ex.25, it is contended that complaint has not been exhibited. Drawing our attention towards the evidence of Dr.Khodabhai Lakhabhai Dabhi, Ex.22, it is contended that as the blades of each of the three weapons had width of 1 cm, the injuries found on the body of the deceased could not have been caused by those weapons. When it has been voluntarily deposed by Dr.Dabhi, court ought to have given much weight on the said evidence. He has also drawn our attention towards the evidence of Dr.Hardev Mohanbhai Vaghela, Ex.65, the Medical Officer of Community Health Centre at Sihor, who examined the victim at Sihor Community Health Centre and

thereafter advised to shift the victim to Sir T.Hospital, Bhavnagar, for further treatment. He has deposed that the deceased received only two injuries and was conscious and alive upto 10 a.m. i.e. till he was treated for his injuries. According to him, contused wounds received by the deceased cannot be caused by the sharp edge of the muddamal dharias. He also contended that there was only one scalp injury on the head. Since no request has been made to declare him as hostile, his evidence should be read as it is by the court. According to Mr.Trivedi, there are contradictions in the number of injuries mentioned between the evidence of eye witnesses and the evidence of Dr.Vaghela. However, court below ought to have believed the evidence of said doctor. Ccourt below further ought to have considered the evidence of Jadavbhai Kalyanbhai Solanki, P.W.13, Ex.46, Shamjibhai Babubhai Solanki, P.W.14, Ex.47 and Vikramsinh Arjunsinh Rahevar, P.W.17, Ex.51 in their proper perspective and

ought to have acquitted the accused. The prosecution has failed to prove the motive also. The quality of evidence with regard to the role played by the appellant is not such as to inspire confidence and, therefore, same ought not have been considered. Since there are no evidence on record to connect the appellant accused with the crime in question, it is submitted that it is a case wherein the appeal is required to be allowed and appellant is required to be acquitted.

10. Learned APP has taken us through the relevant evidence upon which reliance has been placed by the learned counsel for the appellant hereinabove referred to. He has also taken us through other relevant documentary evidence namely, FIR, panchnama of scene of offence, FSL report, post mortem note and other medical evidence and contended that the present appellant is one of the prime accused whose presence, role and active involvement in the crime in question has been fully established. Accused, victim and

witnesses are from the same village and are relatives and incident in question has been taken place in broad day light in presence of various witnesses and, therefore, question of misidentification or falsely involving the accused does not arise. Motive is also established in this case. There are sufficient evidence on record establishing involvement of the accused with the crime. It is further contended that the role of Dr.Hardev Mohanbhai Vaghela, Medical Officer at Sihor Community Health Centre, in giving deposition is creating doubt in the mind of all concerned. The way in which he has given his deposition shows that he has given deposition for the purpose of helping the accused. He has also taken us through the evidence of Dr.Dabhi and contended that the certificate has been produced by Dr.Dabhi of Dr.Vaghela which shows that he has joined hands with the accused for the purpose of destroying the evidence of serious offence. During the course of recording of his

evidence also, he has tried to help the otherside by way of voluntary statement. In these circumstances, his evidence is required to be evaluated with utmost care and caution. After showing the evidence of other doctors including the doctor who performed the post mortem and inquest panchnama, it is contended that whatever injuries seen were immediately narrated in the inquest panchnama and same has been mentioned in detail by the doctor in the post mortem note also. There are no cross examination on that line and, therefore, in haste if any one of the injuries might not have been noticed by Dr.Vaghela at Community Health Centre, Sihor, who has not practically treated him, it may not fatal to the case of the prosecution. However, looking to the seriousness of injuries, Dr.Vaghela has advised to take the victim to Sir.T.Hospital, Bhavnagar. In view of the above, his evidence does not have any weight in the eye of law.

11.It is also contended by Mr.Kodekar that the

defense witnesses examined by the accused side have tried to exaggerate the things in the line of Dr.Vaghela by stating that the victim was fully conscious. He was able to walk while he was being taken to the hospital and as the railway crossing was closed, he himself got down and crossed the railway track and went to Sir T.Hospital which is at a distance of about 30-35 km. According to learned APP, even a layman would say that a person who received such serious head injuries would not be conscious enough to do anything on his own as deposed above. Since this theory is unbelievable and unacceptable, the said evidence is required to be discarded. Since the prosecution is able to prove the case against the appellant beyond reasonable doubt, it is requested that no interference is required in the judgment delivered by the court below.

12.Before proceeding with the matter, it is required to be noted that charge has been framed by the court below against seven

accused for the offence under Secs.147, 148, 149, 302, 324, 504 and 506(2) of IPC and also under Sec.135 of Bombay Police Act. However, at the end of trial, court below has acquitted the accused Nos.3 to 7 and convicted the accused Nos.1-Dinesh Kunverbhai Vaghri and the appellant-accused No.2-Bhikha Kunverbhai Vaghri to suffer for life and also to pay fine of Rs.250/-, in default, to suffer SI for one month for the charge under Sec.302 read with Sec.34 of IPC. The trial court however acquitted them of the charge under Secs.147, 148, 324, 504, 506(2) read with Sec.149 of IPC. This means that trial court did not believe that they were members of illegal assembly. It may be noted that no appeal has been preferred against the acquittal of accused Nos.3 to 7 and hence, the impugned judgment became final qua them and, therefore, we are not discussing on the same. We therefore concentrate only on the present appellant as the original accused No.1, who was also convicted, has not

preferred any appeal as per the record of this appeal.

13.First we will deal with the contention regarding delay in filing the FIR. As per the say of the prosecution and evidence on record, the incident has been alleged to have been taken place on 29-6-1996 at about 8.00 a.m. wherein the deceased Dhirubhai had come to meet his grandparents. At that time, accused No.1-Dinesh Kunver used filthy languages to deceased and also asked him to tell his grandfather not to interfere in the matter of agricultural field. At that time, son of accused Dulabhai came from his house with dharia and it was snatched away by accused No.1 and gave blow with it on the head of Dhirubhai. At that time, present appellant Bhikha Kunver with dharia in his hand and other accused Kishore Dinesh and Dhula Dinesh with iron pipe came running and started inflicting blows on the deceased. At that time, grandparents of the victim along with other witnesses namely, Shamjibhai,

Kanubhai and Popatbhai tried to intervene and, therefore, accused also gave blows to them also as a result of that, Dhirubhai and others received injuries. As others also came there, the accused ran away from the scene of offence. While leaving, they threatened that Dhiru has been saved but he would certainly be killed later on. Thereafter, complainant and Shamji Babubhai took Dhirubhai very near to the road and arranged for the vehicle of Villager Naranbhai and took him to Shihor Community Health Centre and thereafter as suggested by doctor shifted Dhirubhai to Sir.T.Hospital, Bhavangar. He was unconscious and, therefore, complaint was lodged by the complainant in the hospital wherein even motive has also been mentioned. It is also established from the evidence on record that PSI, Shri Sarvaiya was on duty at “A” Division Police Station, Bhavnagar, who received janvajog entry No.66 of 1996 along with endorsement of PSO. He went to Sir.T.Hospital and recorded the complaint of

complainant Ashokbhai Jadav and as the offence has been taken place in the jurisdiction of Sihor Police Station, he has sent the same to Sihor Police Station along with his report and on receiving the same, it has been numbered as Sihor Police Station C.R.No.76 of 1996 for the offences punishable under Secs.147, 148, 149, 302, 324, 504 and 506(2) of IP Code and also under Sec.135 of Bombay Police Act. Along with the endorsement, investigation has been handed over to PSI, Mr.Rehevar and, therefore, PSI, Mr.Rehevar went to the scene of offence and recorded the statement of various witnesses and on the next day, he prepared panchnama of scene of offence in presence of panchas and seized muddamal after following required procedures. Thereafter, further investigation has been done by PSI, Mr.Rajpara. It is required to be noted that the date, time and place of incident have not been challenged by the appellant. Simultaneously, the person in whose vehicle victim was taken to Sihor

Community Health Centre has supported regarding the date, time and place of incident. Similarly, the complainant, Ashokbhai, P.W.2, has categorically deposed the same before the court below regarding the date, place and time and narrated the incident in detail wherein he has given details regarding the presence of accused, their names together with respective weapons held and role played by them. Though he was thoroughly cross examined by the learned counsel for the otherside, nothing contrary came out which shake his evidence. This means that he has stuck to his version given in the FIR and identified the accused in the court also. It is true that he has not mentioned the names of persons who were present at the time of incident in the FIR. As per the law laid down by the Apex Court, FIR is not an encyclopedia wherein each and every aspect is expected to be mentioned in detail. It is required to be noted that if the version given in the FIR is not cryptic, then it can

be treated as FIR. Here in this case, the complainant has given all required details including the motive in the FIR at the Sir.T.Hospital itself narrating the names of witnesses, victim and accused, their respective descriptions together with the role played by them and the weapons used in the commission of offence and, therefore, it can be treated as an FIR. Thus, FIR cannot be said to be an after-thought and has been given after due deliberation. As stated above, FIR has been given at the earliest opportunity and has been exhibited also. Prior to that, they were running to save the life of the victim who was seriously injured which was much important than filing of FIR and, therefore, first they went to Sihor and, thereafter in ambulance he was taken to Bhavnagar and when he was declared dead, at the earliest opportunity, FIR has been given and, therefore, there is no delay in filing the FIR. Therefore, we do not accept the contentions raised by the appellant that

there is a delay in filing the FIR and complaint has not been exhibited.

14. It is required to be noted that the complainant has deposed in detail in the court below. He has been thoroughly cross examined by the advocate but nothing has been come out shaking his evidence. Over and above, there are evidence of other eye witnesses whose presence at the scene of offence is quite natural. The incident has been taken place at 8.00 a.m. which was the time when generally people would be at home. Merely because they are from the same community, their evidence cannot be discarded. When the incident has been taken place during odd hours in a particular place wherein people of one community are staying, presence of other witnesses cannot be expected more particularly when the incident has been taken place in the agricultural field where they were residing and doing agricultural activities along with neighbours.

15.We have carefully examined the evidence of witnesses in detail and we are fully satisfied about their presence as being quite natural. It is true that they are relatives but relatives of both the injured and the deceased as well as of the appellant with varying degree of relation and, therefore, it cannot be said that they have deposed for the purpose of falsely involving the appellant accused.

16.Reliance is placed on a decision of the Apex Court reported in **(2006)2 Supreme Court Cases (Cri) 353** in the case of State of A.P. Vs. S.Rayappa and Others wherein it has been held at head note `A' as under:

> “A. Criminal Trial—Witnesses—Related witness-Merely because witnesses were related to deceased, they cannot be said to be interested witnesses and on that ground alone their testimony cannot be rejected—In view of the reluctance of the general public to be a witness, a close relative is the only natural witness, and the only requirement is that testimony of such a witness should be examined cautiously by court-Words and phrases—“interested witness””.

In view of the aforesaid law laid down by the

Apex Court, the testimony of the witnesses related to the deceased cannot be rejected and it has to be examined cautiously.

17.On a careful examination of the evidence of complainant-Kishorebhai, his grandparents and other eye witnesses, we are of the opinion that though they are relatives of both the accused as well as of the injured and the deceased and merely they are from the same community, their testimonies being trustworthy inspiring confidence cannot be discarded. According to us, they support the evidence of the prosecution in toto.

18.Apart from the above, prosecution gets support from the FIR, panchnama of scene of offence. Not only that, the weapons used in the commission of offence has been identified by all the witnesses.

19.As regards medical evidence, we have gone through the evidence of three doctors namely, P.W.20, Dr.Hardev Mohanbhai Vaghela, Ex.65, Medical Officer at Sihor Community Health Centre, P.W.No.1, Dr.Khodabhai Lakhabhai

Dabhi, Ex.22, the doctor who performed post mortem of the deceased as well as P.W.21, Dr.Jagsaran Ramji Srivastav, Ex.67, doctor at Sir.T.Hospital on emergency duty.

20.It is required to be noted that injured has been taken first to Community Health Centre at Sihor where Dr.Hardev Mohanbhai Vaghela has examined the victim. According to Dr.Vaghela, victim was brought to Referal Hospital, Sihor, at about 9.00 a.m. on 29-6-1996 and as his physical condition appeared to be serious, he applied stitches for the wounds sustained by the injured and thereafter advised to take him to Sir.T.Hospital, Bhavnagar. He has also deposed that the injuries received by the deceased were sufficient to cause his death. He has produced and proved the injury certificate Ex.66. He has been cross examined by the learned counsel for the accused into the court below wherein he has categorically admitted the suggestion that the injury received by the deceased cannot be possible

if a person has fallen on a stone. He has also admitted that the injuries are not possible by muddamal articles-dharias.

21.Dr.Jagsaran Ramji Srivastav, who has examined victim-Dhirubhai at Sir.T.Hospital on emergency duty was examined as P.W.21 at Ex.67. As per his deposition, victim was brought to Sir.T.Hospital at 10.45 a.m. by their relatives and on examination, he found three injuries on various parts of the head of the deceased namely, parietal region, posterior region and occipital region. He also found that the physical condition of the victim was not good and he was unconscious. He noticed that the pulse of the victim was 60 and the victim succumbed to the injuries on the same day at 3.55 p.m. He also admitted that he has not given any injury certificate. When he came to the Court, he came with case papers of deceased and has produced the same at Ex.68. This shows that otherside has tried to produce the case papers of alleged injury certificate of Sihor Hospital through

Dr.Dabhi which fact cannot be ignored by the Court.

22.Prosecution has also examined Dr.Khodabhai Lakhabhai Dabhi as P.W.1 at Ex.22, who performed post mortem on the body of deceased Dhirubhai. He has categorically narrated in his evidence as well as in post mortem that deceased received four external injuries on various parts of head and all those injuries were anti-mortem. According to him, those injuries are possible by way of sharp edged weapon. Cause of death according to him is brain deep injury due to injury on the head. According to him, injuries Nos.1 to 3 shown in the post mortem report are sufficient to cause death in the ordinary course of nature. After seeing the muddamal articles Nos.1 and 2, he has categorically deposed that the injuries received by the deceased are possible by way of these two weapons. He has proved the post mortem note Ex.24. In his cross examination, he has not accepted the suggestion that injury No.1 cannot be

possible by way of muddamal articles Nos.1 and 2-dharias.

23.In short, the prosecution has proved the injuries on the deceased by way of evidence of Dr.Dabhi, who has performed post mortem and narrated four injuries on vital parts of the head of the deceased and it is supported by the inquest panchnama also. It is true that Dr.Vaghela has not noticed four injuries. However, facts remain that looking to the grievous injuries sustained by the victim as admitted by him, physical condition was very serious and hence, he was required immediate treatment and, therefore, he was shifted to Sir.T.Hospital, Bhavnagar. Except that, he has not taken any part in giving treatment. It can therefore be said that the injury has been proved for the purpose of destroying the case of the prosecution through the evidence of Dr.Srivastav.

24.Keeping in mind the way in which the incident has been taken place and serious nature of injuries sustained by the victim on

vital parts of the body and also in view of evidence of doctors including Dr. Srivastav and Dr.Dabhi, who performed post mortem of the deceased, obviously the person will not be conscious at all. Moreover, there are no serious discrepancies which would take away the case of the prosecution which otherwise has been proved by way of above referred evidence on record. We have also gone through the same which has been dealt with by the curt below in its judgment. Therefore, question of giving benefit of doubt to the appellant-accused may not be arisen at all in this case more particularly when the motive has also been established.

25.The appellant came with deadly weapon dharia along with other accused from his house and gave dharia blow on the head i.e. vital part of the deceased which resulted into the offence under Sec.302 of IPC. As the presence of the appellant along with dharia and role has been established by the prosecution beyond reasonable doubt together

with other independent and scientific evidence such as FSL etc., if the appellant is able to mislead the prosecution at initial stage by way of producing the weapon insisting that those are the weapons used by them in the crime in question and thereby tried to take disadvantage of their own wrong, same cannot be taken into consideration by the Court at any stage. We however give much weight to the evidence of the eye witnesses who have narrated the incident in detail along with the role played by each and every accused. We are therefore of the opinion that no illegality or irregularity has been committed by the court below in the impugned judgment warranting interference by this Court in the present appeal. Hence, this appeal is required to be dismissed.

26.Appeal is hereby dismissed.

[R.P.DHOLAKIA,J.]

[M.D.SHAH,J.]

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